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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8D**

**INDIA**

This is the **summative (formal) assessment for Module 8D** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 8D**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial or Avenir Next font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment8D]**. An example would be something along the following lines: 202223-336.assessment8D. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.The final submission date for this assessment is **31 July 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Question 1.1**

Which of the following legislation provides for the rescue of a company:

1. The Insolvency and Bankruptcy Code 2016.
2. The Companies Act 2013.
3. The Presidency-towns Insolvency Act 1909.
4. The Provincial Insolvency Act 1920.

**Question 1.2**

Which one of the following remedies is available to a non-Indian creditor:

1. Recovery proceedings before the Civil Court.
2. Enforcement of security interest under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.
3. Recovery proceedings before the Debts Recovery Tribunal.
4. Mandatory participation in an out-of-court restructuring under the inter-creditor agreement.

**Question 1.3**

Which of the following is not a function of the Insolvency and Bankruptcy Board of India under the Insolvency and Bankruptcy Code 2016?

1. Registration of insolvency professionals.
2. Registration of insolvency professional agencies.
3. Carrying out inspections and investigations of insolvency professionals.
4. Appointing an insolvency professional as a resolution professional for a company.

**Question 1.4**

Which of the following forms of security cannot be enforced under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002?

1. A mortgage in English form.
2. A pledge.
3. A charge.
4. A hypothecation.

**Question 1.5**

Which one of the following will make a creditor’s petition for adjudication as a bankrupt under the Presidency-towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 non-compliant with the requirements:

1. The debt owing exceeds INR 5,000.
2. The debt is a liquidated sum payable immediately or in some certain future time.
3. The relevant act of insolvency occurred five months prior to the presentation of the petition.
4. The debtor did not defraud its creditors.

**Question 1.6**

Indicate which one of the following enjoys **the highest priority** in distribution of proceeds from a bankrupt’s assets under the Insolvency and Bankruptcy Code 2016:

1. Fees of the bankruptcy trustee.
2. Dues owed to the State and Central Government.
3. Workmen’s dues for 24 months.
4. Employees’ dues for 12 months.

**Question 1.7**

Which of the following is **not a requirement** for initiating voluntary liquidation under the Insolvency and Bankruptcy Code 2016?

1. Special resolution of the shareholders of the corporate debtor.
2. Declaration of the directors of the company on the ability of the company to repay its debts from available assets.
3. Approval of two-thirds of the creditors.
4. Approval of the National Company Law Tribunal.

**Question 1.8**

In which one of the following processes is the entire section 29A of the Insolvency and Bankruptcy Code 2016 **not applicable**?

1. Corporate insolvency resolution process of an MSME.
2. Pre-pack insolvency process of an MSME.
3. Sale of assets of a company in liquidation.
4. Sale of assets under voluntary liquidation.

**Question 1.9**

In which of the following situations can an **application for initiation** of corporate insolvency resolution process **not be** filed under the Insolvency and Bankruptcy Code 2016?

1. The corporate debtor is a bank.
2. The corporate debtor is an MSME.
3. The creditor is an operational creditor who has issued a demand notice for the debt.
4. The corporate debtor is in financial difficulties but has defaulted to only one creditor to the extent of INR 20 million.

**Question 1.10**

**Approval of the committee of creditors** is not a requirement for the following transactions undertaken by the resolution professional under the Insolvency and Bankruptcy Code 2016:

1. Raising interim finance.
2. Undertaking any related party transactions.
3. Payment of the approved insolvency resolution process costs.
4. Amending the constitutional documents of the corporate debtor.

**QUESTION 2 (direct questions) [10 marks in total]**

**Question 2.1 [maximum 2 marks]**

Briefly describe the remedies against an order of the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016.

An order of the NCLT can be appealed within 30 days of the order by way of an application to the National Company Law Appellate Tribunal.

**Question 2.2 [maximum 4 marks]**

Briefly describe the exceptions to the moratorium during the corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016.

A moratorium ordered under the Insolvency and Bankruptcy Code 2016 does not apply in respect of (1) guarantors of the debtor; (2) certain transactions identified by the government; (3) the supply of goods or services identified by the interim resolution professional or the resolution professional as being essential for the debtor continuing as a going concern if the debtor has failed to pay for such supplies during the moratorium period; and (4) the revocation of government approvals if there has been a failure by the debtor to pay the relevant government authority during the moratorium period.

**Question 2.3 [maximum 3 marks]**

Indicate the acts of insolvency under the Presidency-towns Insolvency Act 1909.

The acts of insolvency under the Presidency-Towns Insolvency Act 1909 are:

* a transfer by the debtor or all or substantially all of his assets for the benefit of all of his creditors;
* a transfer by the debtor of all or any part of his property to a creditor or a third party with the intent to delay or defraud more than one of this creditors;
* a transfer which would be void as a fraudulent conveyance under another bankruptcy law applicable to the debtor;
* failure to comply with an insolvency notice received from a creditor;
* the debtor is imprisoned due to the execition of a money decree or any of his property is sold or attached (for at least 21 days) under execution of a decree of any court for the payment of money by the debtor;
* the debtor remains outside the territories to which the bankruptcy acts apply or is absent from his place of residence/ incommunicado with the intention to defraud or delay his creditors;
* the debtor is presented with a petition to be an adjudged insolvent;
* the debtor gives notice to his creditors that has or will suspend making payments of his debts.

**Question 2.4 [maximum 1 mark]**

Explain the cross-border insolvency arrangements in the Indian regime.

Cross-border insolvency arrangements have not yet been developed in India. India is not yet party to the UNCITRAL Model Law on Cross-Border Insolvency.

**QUESTION 3 (essay-type question) [15 marks]**

Write a short essay on the process of sale of assets of a company, and distribution of proceeds under liquidation in terms of the Insolvency and Bankruptcy Code 2016.

Your answer should make reference to at least the following:

* available methods to sell the assets;
* requirement for valuation and consultation with the creditors; and
* priority of different types of claims in distribution.

The sale of the assets of the corporate debtor is undertaken by the liquidator. The liquidator will evaluate the liquidation estate and produce an asset memorandum which will set out the value of the assets (which is determined by at least two valuers appointed by the liquidator), the expected mode of realising the assets (public auction or private sale; all or in part), and the likely recovery. The asset memorandum is delivered to the NCLT within 75 days of the commencement of the liquidation. The liquidator is require to try to sell the debtor as a going concern at the first auction (notwithstanding any recommendation of the committee of creditors to the contrary).

The liquidator should ordinarily attempt to sell the assets by way of public auction. However, a private sale can be used if NCLT approval has been obtained for a private sale, the assets are sold in a private sale at a price higher than the reserve price at a failed publi auction, the assets are perishable or otherwise likely to deteriorate in value if not sold immediately.

In respect of a secured creditor that wants to enforce its security and has so informed the liquidator, the liquidator must inform the secured creditor if the liquidator has been informed that there is a willing purchaser of the secured asset at a higher price than the price proposed by the secured creditor for the realisation of such asset. The secured creditor is then required to sell to the willing purchaser. There are time limits on this process.

The liquidator collects in the disposal proceeds into a specified bank account in the name of the debtor and the proceeds are distributed in the following order:

* insolvency resolution process and liquidation costs;
* pari passu between 24 months of prior worker’s dues and secured creditors who have relinquished their security;
* 12 months of prior wages and dues owed to employees (other than worker’s dues);
* unsecured financial debts;
* pari passu towards two years of prior amounts due to the Indian central and state governments and secured creditors for any shortfall after the enforcement of their security;
* remaining debts and dues;
* preference shareholders;
* equity shareholders.

**QUESTION 4 (fact-based application-type question) [15 marks]**

Big Air Limited, an Indian company, (the Company) is a commercial airline company in India. It has leased aircrafts from various lessors. The Company has failed to pay the lease rentals in the last few months which now aggregate to INR 2 billion. The lessors seek to terminate the leases and take away the aircraft from the Company’s control. However, the Company has not defaulted to its other creditors.

The Board of the Directors of the Company has contacted you to advise them on the options available and key considerations. In this context, answer the questions below.

**Question 4.1 [maximum 7 marks]**

Prepare a note for the Board on the ability to initiate insolvency proceedings and the steps to be taken in this regard.

Given the terms of the question, I have consider the board of directors of Bag Air Limited making an application, rather than discussing the ability of the lessors (who would be categorised as financial creditors) making the application.

As there has been a default (the debt is for more than INR10m) and provided the decision is supported by at least 75% of the shareholders of Bag Air Limited, Bag Air Limited can apply to the NCLT to be put into a corporate insolvency resolution process. This is for the purpose of rehabilitating / rescuing the debtor (not for its liquidation). The NCLT will admit the application within 14 days subject to confirming the existence of the default.

The CIRP is meant to be completed within 180 days but this timeframe can be extended by way of resolution of the creditors committee (passed with 66% or more of the value of the creditors) and with the approval of NCLT by up to 90 days.

**Question 4.2 [maximum 8 marks]**

Prepare a note for the Board explaining the effect of insolvency proceedings on the rights of the lessors and whether the aircraft can be retained by the Company.

The management of the affairs of Bag Air Limited will be vested in the resolution professional. The powers of the board of directors are suspended during the CIRP.

If the NCLT admits the CIRP application, a moratorium arises from the day of admission and lasts until completion of the CIRP. The moratorium will prevent the commencement or continuation of legal proceedings in respect of the default and will prevent the lessors from recovering the leased aircrafts and will prevent the lessors enforcing any security they have been granted by the debtor. It may be possible that the resolution professional can state that there are essential services for the going concern nature of Bag Air Limited being provided by the lessors (e.g. aircraft maintenance) and that this supply of services cannot be suspended during the moratorium.

**\* End of Assessment \***